

(3) Pile driving:

(i) A minimum shutdown zone of 250 m radius shall be established around all impact pile driving activity.

(ii) Contractors shall reduce the power of impact hammers to minimum energy levels required to drive a pile.

(iii) Port Dolphin shall use a sound attenuation measure for impact driving of pilings. Prior to beginning construction, Port Dolphin must provide information to NMFS about the device to be used, including technical specifications. NMFS must approve use of the device before construction may begin. If a bubble curtain or similar measure is used, it shall distribute small air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure (e.g., temporary sound attenuation pile) must provide 100 percent coverage in the water column for the full depth of the pile. Prior to any impact pile driving, a performance test of the sound attenuation device must be conducted in accordance with a NMFS-approved acoustic monitoring plan. If a bubble curtain or similar measure is utilized, the performance test shall confirm the calculated pressures and flow rates at each manifold ring.

(iv) Ramp-up:

(A) A ramp-up technique shall be used at the beginning of each day's in-water pile driving activities and if pile driving resumes after it has ceased for more than 1 hour.

(B) If a vibratory driver is used, contractors shall be required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure shall be repeated two additional times before full energy may be achieved.

(C) If a non-diesel impact hammer is used, contractors shall be required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets.

(D) If a diesel impact hammer is used, contractors shall be required to turn on the sound attenuation device for 15 seconds prior to initiating pile driving.

(v) No impact pile driving shall occur when visibility in the shutdown zone is significantly limited, such as during heavy rain or fog.

(4) Additional mitigation measures:

(i) Use of lights during construction activities shall be limited to areas where work is actually occurring, and all other lights must be extinguished. Lights must be shielded such that they illuminate the deck and do not intentionally illuminate surrounding waters, to the extent possible.

(ii) Additional mitigation measures as contained in a LOA issued under §§216.106 and 217.157 of this chapter.

(b) [Reserved]

§217.156 Requirements for monitoring and reporting.

(a) Visual monitoring program:

(1) Port Dolphin shall employ, at minimum, two qualified PSOs during specified construction-related activities at each site where such activities are occurring. All PSOs must be selected in conformance with NMFS' minimum qualifications, as described in the preamble to this rule, and must receive training sponsored by Port Dolphin, with topics to include, at minimum, implementation of the monitoring protocol, identification of marine mammals, and reporting requirements. The PSOs shall be responsible for visually locating marine mammals in the shutdown and disturbance zones and, to the extent possible, identifying the species. PSOs shall record, at minimum, the following information:

(i) A count of all marine mammals observed by species, sex, and age class, when possible.

(ii) Their location within the shutdown or disturbance zone, and their reaction (if any) to construction activities, including direction of movement.

(iii) Activity that is occurring at the time of observation, including time that activity begins and ends, any acoustic or visual disturbance, and time of the observation.

(iv) Environmental conditions, including wind speed, wind direction, visibility, and temperature.

(2) Port Dolphin shall sponsor a training course to designated crew members assigned to vessels associated with construction activities or support

of operations who will have responsibilities for watching for marine mammals. This course shall cover topics including, but not limited to, descriptions of the marine mammals found in the area, mitigation and monitoring requirements contained in a LOA, sighting log requirements, provisions of NMFS Vessel Strike Avoidance Measures and Reporting for Mariners, and procedures for reporting injured or dead marine mammals.

(3) Monitoring shall be conducted using appropriate binoculars, such as 8x50 marine binoculars. When possible, digital video or still cameras shall also be used to document the behavior and response of marine mammals to construction activities or other disturbances.

(4) Each PSO shall have two-way communication capability for contact with other PSOs or work crews. PSOs shall implement shut-down or delay procedures when applicable by calling for the shut-down to the equipment/vessel operator.

(5) A GPS unit and/or appropriate range finding device shall be used for determining the observation location and distance to marine mammals, vessels, and construction equipment.

(b) Acoustic monitoring program:

(1) Acoustic monitoring must be conducted in accordance with the NMFS-approved acoustic monitoring plan.

(2) Port Dolphin shall provide NMFS with empirically measured source level data for designated sources of sound associated with Port construction and operation activities and shall verify distances to relevant sound thresholds. Measurements shall be carefully coordinated with sound-producing activities.

(3) [Reserved]

(c) Reporting—Port Dolphin must implement the following reporting requirements:

(1) A report of data collected during monitoring shall be submitted to NMFS following conclusion of construction activities. Subsequent reports concerning Port operations shall be submitted annually. The reports shall include:

(i) All data required to be collected during monitoring, as described under §217.156(a) of this chapter, including

observation dates, times, and conditions;

(ii) Correlations of observed behavior with activity type and received levels of sound, to the extent possible; and

(iii) Estimations of total incidental take of marine mammals, extrapolated from observed incidental take.

(2) Port Dolphin shall also submit a report(s) concerning the results of all acoustic monitoring. Acoustic monitoring reports shall include information as described in a NMFS-approved acoustic monitoring plan.

(3) Reporting injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a LOA (if issued), such as an injury (Level A harassment), serious injury, or mortality, Port Dolphin shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

(A) Time and date of the incident;

(B) Description of the incident;

(C) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(D) Description of all marine mammal observations in the 24 hours preceding the incident;

(E) Species identification or description of the animal(s) involved;

(F) Fate of the animal(s); and

(G) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Port Dolphin to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Port Dolphin may not resume their activities until notified by NMFS.

(ii) In the event that Port Dolphin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state

of decomposition), Port Dolphin shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the same information identified in §217.156(b)(3)(i) of this chapter. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Port Dolphin to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that Port Dolphin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Port Dolphin shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Port Dolphin shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) *Annual reports.* (i) A report summarizing all marine mammal monitoring and construction activities shall be submitted to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA) following the conclusion of construction activities. Thereafter, Port Dolphin shall submit annual reports summarizing operations activities.

(ii) The annual reports shall include data collected for each marine mammal species observed in the project area. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to activities shall also be included in the reports. Additional information that shall be recorded during activities and contained in the reports include: date and time of marine mammal detections, weather conditions, species identification, approximate distance from

the source, and activity at the construction site when a marine mammal is sighted. Port Dolphin shall extrapolate observed incidences of take to provide an estimate of actual incidences of take.

(5) *Five-year comprehensive report.* (i) Port Dolphin shall submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA) 180 days prior to the expiration of the regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the activities conducted under the regulations in this subpart.

(ii) Port Dolphin shall submit a revised final comprehensive technical report, including all monitoring results during the entire period of the LOAs, 90 days after the end of the period of effectiveness of the regulations to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA).

§217.157 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Port Dolphin must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Port Dolphin must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Port Dolphin must apply for and obtain a modification of the LOA as described in §217.158 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and